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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
--X
NY FUEL HOLDINGS, LLC; METRO NY DEALER STATIONS, LLC; NY FUEL DISTRIBUTORS, LLC.; and NY DEALER STATIONS MANAGEMENT, LLC,

Plaintiffs,   CIVIL ACTION NO.:

-against-

SAMMY ELJAMAL, JAMES A. WEIL, BRENT COSCIA and WILTON MOTIVA ASSOCIATES, LLC.,

Defendants.
--X

NOTICE OF REMOVAL OF SUPREME COURT ACTION

TO: UNITED STATES DISTRICT COURT

THE CLERK OF THE UNITED STATES DISTRICT COURT;

THE HONORABLE ROBERT D. DRAIN, UNITED STATES BANKRUPTCY JUDGE

THE CLERK OF THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

THE HONORABLE FRANCESCA E. CONNOLLY, JUSTICE OF THE SUPREME COURT FOR THE COUNTY OF WESTCHESTER,

THE CLERK OF SUPREME COURT FOR THE COUNTY OF WESTCHESTER;

AND ALL PARTIES IN THE SUPREME COURT CIVIL ACTION HEREBY REMOVED:

PLEASE TAKE NOTICE THAT SAMMY ELJAMAL, the debtor and debtor in possession in a case under Chapter 11 of Title 11 of the United State Code numbered 15-22872 pending before this Court (the "Debtor"), by his counsel, Anne Penachio, Esq. of **PENACHIO MALARA LLP**, hereby submits this Notice of Removal, pursuant to 28 U.S.C. §§ 157(a) and 1452(a) and in accordance with Rule 9027 of the Federal Rules of Bankruptcy Procedure, removing the following case from the New York State Supreme Court, Westchester County: NY Fuel Holdings, LLC, et al. v. Sammy Eljamal, et al., Index No. 70487/2012 ("Supreme Court Action").

PLEASE TAKE FURTHER NOTICE THAT the Debtor seeks referral from this Court to the Bankruptcy Court pursuant to 28 U.S.C. § 157(a) and the "Amended Standing Order of Reference" (M10-468 12 MISC 00032) dated January 31, 2012 of the Hon. Loretta A. Preska, Chief Judge of the United States District Court for the Southern District of New York.

In support of removal, the Debtor respectfully represents as follows:

1. On or about June 18, 2015 (the "Petition Date"), the Debtor filed for relief (the "Chapter 11 Case") under chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"). The Chapter 11 Case is pending before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), under case

number: 15-22872-Rdd. Since the filing, the Debtor has continued in his business and managing his properties as debtor and debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtor is in the business primarily of owning and managing gasoline service stations and convenience stores. In addition, the Debtor is engaged in operating a wholesale fuel business including an entity known as Metro NY Dealer Stations LLC.

3. His current financial predicament is caused in large part by a dispute between the Debtor and various business associates over his interests in various entities including NY Fuel Holdings, LLC ("NYFH"), NY Fuel Distributors, LLC ("NYFD"), and Metro NY Dealer Stations, LLC ("Metro NY"), and NY Dealer Stations Management LLC ("NYDSM") (Collectively, the "Companies" or the "Plaintiffs").

4. The Debtor asserts that he has a 50% interest in Metro NY and NYFH (NYFH owns 100% of NYFD and NYDSM), and pursuant to the respective operating agreements, is entitled to various distributions of the Net Cash ("Distribution"). According to the Complaint, at the time that the Supreme Court Action was commenced on or about December 14, 2012, the Distribution was $890,000.00 of which the Debtor was allegedly entitled to $76,785.25 (the "Debtor's Distributive Share").

5. The Companies alleged that a dispute existed over the proper distribution and or allocation of the debtor's Distributive share. Various entities asserted a right to the Debtor's Distributive share including the Companies and the Debtor's former counsel, Albert Pirro ("Pirro") who asserted a charging lien on the funds.

6. In the Complaint in the Supreme Court Action, the Companies seek a determination from the Court as to the proper application of the Debtor's Distributive Share.

7. On or about January 29, 2013, an Amended Complaint was filed, which added the New York State Tax Commission and the United States of America as co-defendants. On or about March 15, 2013, the Supreme Court Action was removed to the United States District Court, Southern District of New York, under docket number 7:13-cv-01743-NSR.

8. Subsequent to the removal, the claims by Pirro to the Debtor's Distributive Share were resolved on or about April 9, 2013. In addition, the claims of the NYS Tax Commission and the United States of America concerning unsatisfied tax judgments were satisfied and the action was discontinued insofar as asserted against them. On or about May 8, 2014, the Federal Court remanded the action to Supreme Court of the State of New York, County of Westchester for lack of subject matter jurisdiction.

9. On or about December 23, 2014, the Companies filed a Second Amended Complaint, adding three new interpleader claimants, James Weil ("Weil"), Brent Coscia ("Coscia") and Wilton Motiva Associates, LLC ("Wilton") each of whom claimed a right to the Debtor's Distributive Share. Based upon the Second Amended Complaint, the caption of the Supreme Court Action was re-titled NY Fuel Holdings, LLC, Metro NY Dealer Stations, LLC; NY Fuel Distributors, LLC and NY Dealer Stations Management, LLC v. Sammy Eljamal, James A. Weil, Brent Coscia and Wilton Motiva Associates, LLC.

10. In the Second Amended Complaint, the Companies seek a determination as to the allocation and payment of the Debtor's Distributive Share *vis a vis* the Debtor, Weil, Coscia, and Wilton. Pursuant to a Stipulation and Court order, the Companies have deposited (and will continue to deposit) the Debtor's Distributive Share. Upon information and belief, the amount at issue and currently on deposit in escrow as of July 20, 2015 is $583,057.35.

11. On or about January 12, 2015, the Debtor filed an Answer to the Second

Amended Complaint wherein he asserts various denials and affirmative defenses. Essentially, in the Answer the Debtor asserts that he is entitled to the entire amount of the Debtor's Distributive Share.

12. The Debtor believes that he will ultimately prevail on all aspects of the Supreme Court Action. The Debtor invoked the protection of the Bankruptcy Court to permit him to focus on his business interests, address the allegations made by the minority business associations in an orderly manner and pursue appropriate remedies against his business associations and defend the claims made against him by said business associates.

FACTS SUPPORTING REMOVAL

13. The Supreme Court Action, including all claims and causes of action asserted therein, is a civil action other than a proceeding before the United States Tax Court, nor is it a civil action by a government unit to enforce such government unit's police or regulatory power.

14. The Supreme Court Action, until the filing of this Notice of Removal and the filing of a copy of this Notice of Removal with the Clerk of the Supreme Court of New York for the County of Westchester, was still pending before the Supreme Court of New York for the County of Westchester.

15. Removal of the Supreme Court Action is crucial in this case. It is imperative that this Court determine the respective rights of the parties to the Debtor's Distributive Share consistent with the priority scheme articulated in the Bankruptcy Code. The Debtor's Distributive Share will be a primary basis for the funding of a plan of reorganization which will enable him to emerge from Chapter 11.

16. Absent removal, the Debtor may be forced to litigate issues relating to rights to the Debtor's Distributive Share in two separate forums (ie before this Court and the State Court).

Moreover, absent removal, the pendency of actions in multiple separate courts not only will cause the Debtor to bear increased expenses, but may also lead to inconsistent findings and undermine judicial economy.

17. Furthermore, removal is essential, because the Bankruptcy Court can afford the parties complete relief contrary to the instant state court action where the Defendant-Debtor would be required to litigate the same issues as have been alleged in whole or in part in other legal actions.

18. By this Notice of Removal, the Debtor is removing the instant Supreme Court Action to the Federal District Court which, presumably will refer the action to the Bankruptcy Court pursuant to "Standing Order of Referral of Cases to Bankruptcy Judges" for the Southern District of New York, dated July 10, 1984 (Ward, Acting C. J.) as amended on January 31, 2012 by Chief Judge Preska.

19. Removal is appropriate, because absent removal, the Debtor will be forced to litigate the same or similar issues in multiple different actions. By removing the Supreme Court Action and other pending actions to this Court, the Debtor will streamline the process of resolving the inextricably intertwined issues of the instant Supreme Court Action and the other pending actions in to a single forum and protect his valuable property interest in Distributions. Removal promotes efficiency and judicial economy and limits the possibility of inconsistent rules.

20. As set forth above, the Debtor submits that the removal of the instant Supreme Court Action will facilitate his ability to emerge from bankruptcy protection more quickly.

21. The Bankruptcy Court has jurisdiction over the instant Supreme Court action pursuant to 28 U.S.C. § 1334(b) and the "Standing Order of Referral of Cases to Bankruptcy

Judges" for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.) as amended on January 31, 2012 by Chief Judge Preska.

22. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1409 and 1452 in that all or virtually all of the parties are residents of this District; the $583,057.35 is on deposit in this District; and virtually all of the acts, omission or events which gave to rise to the subject litigation occurred within this District and, in particular, within Westchester County.

23. All of the issues between the parties should be resolved in the same forum, and the Bankruptcy Court can afford complete relief to all the parties.

24. Removal is essential to protect the Debtor's property interests under 11 U.S.C. § 541.

25. The instant Supreme Court Action is a civil proceeding related to the Chapter 11 Case. Removal is appropriate because the Supreme Court Action involves issues related to a determination of the assets and liabilities of the Debtor and the valuation thereof, including the Debtor's Distributive Share and his rights to the $583,057.35 on deposit. Removal is also appropriate, because resolution of the issues that are the subject of the instant Supreme Court Action is one of several key elements in the Debtor's ability to successfully reorganize in a timely fashion.

26. The Defendant-Debtor further submits that the instant Supreme Court Action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O).

27. Upon removal, the Debtor consents to entry of final orders or judgment by the Bankruptcy Court.

28. In accordance with Rule 9027(a)(1) of the Federal Rules of Bankruptcy Procedure, copies of the docket, process, and pleadings in the Supreme Court Action are annexed

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hereto as Exhibits A through .

29. This Notice of Removal is filed within ninety (90) days of the order for relief in the Chapter 11 Case, in accordance with Rule 9027(a)(2) of the Federal Rules of Bankruptcy Procedure.

NOW THEREFORE, all parties to the Supreme Court Action are **HEREBY NOTIFIED**, pursuant to Rule 9027(b) & (e) of the Federal Rules of Bankruptcy Procedure, as follows:

Removal of the Supreme Court Action and all claims and causes of action therein to the Bankruptcy Court will be effected upon the filing of this Notice of Removal with the Clerk of the Supreme Court of New York for the County of Westchester, pursuant to Rule 9027(e) of the Federal Rules of Bankruptcy Procedure. Upon such filing, the parties to the Supreme Court Action shall proceed no further in the Supreme Court of New York for the County of Westchester unless and until this action is remanded by the Bankruptcy Court.

Dated: White Plains, New York
September 10, 2015

Respectfully submitted,

By:________________________

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